

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

INNOVATIVE DISPLAY
TECHNOLOGIES LLC,

Plaintiff,

V.

MICROSOFT CORP.,

Defendant.

Civil Action No. 2:13-cv-00783-JRG

MICROSOFT CORPORATION’S MOTION TO DISMISS AMENDED COMPLAINT

On November 20, 2013, Defendant Microsoft Corporation (“Microsoft”) filed a motion to dismiss or transfer, which has now been fully briefed. (*See* Dkt. Nos. 16, 28, 31.) During the pendency of the briefing on that motion, plaintiff Innovative Display Technologies (“IDT”) filed an amended complaint. (Dkt. No. 26.) IDT addressed its amended complaint in its opposition brief, as did Microsoft in its reply—explaining why the amendment did not affect Microsoft’s basis for dismissal or transfer. (*See* Dkt. No. 31 at 2–5.) For the reasons set forth in Microsoft’s opening brief (Dkt. No. 16) and reply brief (Dkt. No. 31), Microsoft respectfully requests that the Amended Complaint be dismissed pursuant to Fed. R. Civ. P. 12(b)(7) for failure to join an indispensable party, and respectfully renews its request that, in the alternative, this case be transferred to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1404(a)

Dated: December 23, 2013

Respectfully submitted,

/s/ Harry L. Gillam, Jr.

Harry L. Gillam, Jr.

State Bar No. 07921800

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this motion was served on all counsel who have consented to electronic service, Local Rule CV-5(a)(3), on December 23, 2013.

/s/ Harry L. Gillam, Jr.
Harry L. Gillam, Jr.

CERTIFICATE OF CONFERENCE

Pursuant to Local Rules CV-7(h) and (i), I hereby certify that counsel for Microsoft conferred with counsel for IDT concerning the filing of this Motion on December 23, 2013, and counsel for IDT opposes this motion.

/s/ Harry L. Gillam, Jr.
Harry L. Gillam, Jr.